Proposed new recommendations

Hypothesis of problem

e AOC in recommendation 9.1 requires an ongoing assessment of various aspects of ICANN transparency. At the curren
mechanism exists for such an ongoing assessment.

Background research undertaken

While ATRT1 did not make any specific recommendations on a maner in which continual assesment could be done, pre
consultants reports, contracted by ICANN, did include suggestions[1]

From the One World Trust 2007 Report[2]

> *Transparency refers to the provision of accessible and timely information to stakeholders. Reporting and*
> *disclosure systems and processes that enable information sharing are central to an accountable organisation.*
> *Examples include an information disclosure policy, audited accounts and annual reports. Transparency*
> *mechanisms need to be based on the principle of presumption of disclosure, i.e. all information will be made*
> *available in the absence of a narrowly defined set of conditions for non-disclosure.[3]*

> *31. To ensure compliance with any organisational policy, it is important that there is high level oversight and*
> *leadership. Without this, implementation will only ever be piecemeal. To ensure implementation of the*
> *information disclosure within ICANN therefore, responsibility for overseeing the policy should be assigned to a*
> *senior*
> *manager.*

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larity sake the recommendations made by ATRT1 are describe as Recommendations, while the recommendations made by outside
tants in studies commissioned by ICANN are listed as suggestions. Note, while advice might have been a better word, 'advice' and 'A
lready taken on specific meanings with the ICANN context.
London UK 2007 Independent Review of ICANN's Accountability and Transparency – Structures and Practices
page 10

32. Supporting this, a set of indicators should be developed to monitor the implementation of the policy, and an annual review should be undertaken which identifies how ICANN is complying with the policy, where there are problems, and the steps that are to going be taken to address these (see recommendation 5.1 in section 8.) Recommendation 1.3: ICANN should consider assigning responsibility for overseeing organisation-wide compliance with the Information Disclosure Policy to a publicly named senior manager; and making publicly available an annual review that documents compliance with the policy.[4]

100. While ICANN has three mechanisms for investigating complaints from members of the ICANN community, the organisation does not have a policy or system in place that provides staff with channels through which they can raise complaints in confidentiality and without fear of retaliation. Having such a policy (often referred to as a whistleblower policy) is good practice among global organisations. A whistleblower policy that provides such protections serves as an important means of ensuring accountability to staff as well as preventing fraudulent behaviour, misconduct and corruption within an organisation.[5]

Recommendation 4.2: ICANN should consider implementing processes that act as deterrents to abuses of power and misconduct which would protect staff who might want to raise such instances. Specifically, ICANN should consider developing a whistleblower policy that enables staff to raise concerns in a confidential manner and without fear of retaliation; and developing appropriate systems to foster compliance (see Appendix 5 for examples of good practice).[6]

134. While the Ombudsman, Reconsideration Committee and the Independent Review Panel provide complaints based approaches to compliance, to generate greater trust among stakeholder, ICANN needs to take a more proactive approach.

135. To address this issue, ICANN should consider a regular independent audit of their compliance with accountability and transparency commitments. Alternatively, it could develop a permanent compliance function to emphasize prevention by identifying shortcomings as they emerge and before they become systemic problems. In either case, a regular report on compliance should be produced and publicly disseminated.

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page 14
page 28
page 29

136. For either approaches, independence should also be ensured. Global organisations such as the International Finance Corporation have addressed this issue by locating their audit/compliance function in the office of the Ombudsman. Recommendation 5.1: ICANN should consider having an independent report produced, perhaps annually, that would measure the organisation's compliance with transparency and accountability commitments made in its By-Laws.[7]

Berkman in Section 2.4 of their report, recommends that ICANN follow the recommendations of the One World Trust in carrying out a yearly transparency audit that would be published as part of the annual review.

2.4 Transparency Audit

(a) Issues
The lack of a comprehensive audit of ICANN's information activities makes it difficult to assess its practices across active, passive, and participatory transparency.

(b) Observations

The 2007 One World Trust review describes an ICANN initiative "to conduct an annual audit of standards of accountability and transparency, including an audit of the commitments made in these Management Operating Principles . . . by an external party" with the results of the audit "published in the Annual Report."xxxv The last annual report does not contain such an audit.

(c) Discussion

ICANN currently lacks an up-to-date, publicly available transparency audit. This makes it difficult to make substantive assessments of ICANN's practices as they relate to active, passive, and participatory transparency.

The lack of empirical material (e.g., on the time delays in the publication of documents) currently forces reviewers to look for conceptual, structural, and procedural deficiencies in order to identify if, where, and how there are inconsistencies between guiding policies and practices. A comprehensive audit, in contrast, would allow for periodic, facts-based, internal and external reviewing and benchmarking; ICANN could greatly benefit from this when further improving its information policies.

Such a transparency audit needs to be governed by clear policies and processes, which set forth the categories of information pertinent to such an audit, among other things. Following an earlier recommendation by the One World Trust review, the transparency audit should be published in the Annual Report. In addition, the Berkman team suggests that the underlying data be released as part of the Dashboard/ICANN Performance Metrics.xxxvi Accountability and Transparency at ICANN: An Independent Review {99}

(d) Recommendation
Create and implement policies and processes for conducting and communicating regular transparency audits.

In terms of the repsonse to the OWT report and the Board decision:

ICANN's response in June 2007 was uncategorical: "A whistleblower policy will be developed by General Counsel that outlines ICANN's local obligations under law as well as a statement of principle to develop a uniform approach across ICANN offices." (Point 4.2: http://www.icann.org/en/transparency/mop-update-07jun07.htm)[8]

o **Summary of ICANN input**

When requested ICANN provided regacted docuamtation on the Employee Hotline

o **Summary of community input via the public comment process and face to face meetings**

o **Summary of other relevant research**

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d Decsions See: http://www.icann.org/en/announcements/announcement-4-29mar07.htm

ears that since the begining of the program there has been only 1 report to the Hotline.

is also evidence that there have been employee reports of problems that have not been reported to the hotline.

Public statements by ex-employees made at the Public forum on the climate of fear the exists among much of the staff

Private statements made to the ATRT2 confidentially that indicate that the climate of fear main still persist and that repor problem to the senior management can results in disciplinary action that may include dismissal. It was not the ATRT2 rc investigate these confidential issues in detail, but they offer evidence that there are problems that are not being dealt wit transparent manner.

There has been no public reporting on such issues as recommended by Berkman or OWT.

the Ombudsman's charter does not include employee issues, discussions with the Ombudsman indicated that the current dsman sees a role for the office in dealing with such issues. Not only are the ICANN employees members of the ICANN iity, but their issues, especially when related to functioning of ICANN in relation to ICANN processes and procedures are nt to the Ombudsman's yearly report on the state of stakeholder issues with ICANN.

Relevant ICANN bylaws

Article III with relation to the absence of requirements for a yearly transparency report

Article V Sections 2,3 Ombudsman charter and Operations

Relevant ICANN published policies

ICANN has not publisehd its employee transparency/whistleblowing policy.

Relevant ICANN published procedures

ATRT2 analysis

Draft recommendation

ICANN must arrange for a profession review of its whistleblower policy to insure that the ICANN program meets the high
standards as established by *tbd*
- ○ This report to be made public
- ○ Processes for ICANN employee transparency and whistleblowing to be made public

ICANN should include a yearly transparency report as part of its yearly report.
- ○ ICANN Transparency report needs to include a section on Employee whistleblowing activity including metric on:
  - ■ Reports submitted
  - ■ Reports that resulted in change to ICANN practices

This report should be created under the supervision of the ICANN Ombudsman.
- ○ This requires a change to By-laws on the Ombudsman scope

Public Comment on Draft Recommendations

Final recommendation